SUPREME COURT OF THE UNITED STATES.

No. 521.—October Term, 1925.

Stanley P. Ashe, Warden of the State Penitentiary for the Western District of Pennsylvania, Appellant, *vs.* The United States of America ex rel. Joseph Valotta.	Appeal from the District Court of the United States for the Western District of Pennsylvania.

[March 15, 1926.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an appeal from an order on a writ of habeas corpus discharging the relator, Valotta, from the custody of the appellant, by whom he was held under a sentence of death. Valotta shot a man in a street brawl—we will assume, in circumstances that suggest considerable excuse—and then killed a policeman who pursued him, within a short distance from the first act. He was indicted separately for the murder of each man, tried in a Court of Pennsylvania, found guilty of murder in the second degree for the first killing and guilty of murder in the first degree for the second, and was sentenced to death. The judgment was affirmed by the Supreme Court of the State.

No writ of error or certiorari was applied for, Valotta having no funds and his counsel being ignorant of the statute authorizing proceedings in such cases without prepayment of fees or costs. But when the time for such proceedings had gone by, a writ of *habeas corpus* was obtained from a judge of the District Court of the United States with the result that we have stated. The grounds of the order seem to have been that Valotta was tried upon two indictments for felony at the same time and was deprived of the full number of challenges that he would have had if he had been tried separately upon each.

There is no question that the State Court had jurisdiction. But the much abused suggestion is made that it lost jurisdiction by

trying the two indictments together. Manifestly this would not be true even if the trial was not warranted by law. But the Supreme Court of Pennsylvania has said that there was no mistake of law, and so far as the law of Pennsylvania was concerned it was most improper to attempt to go behind the decision of the Supreme Court, to construe statutes as opposed to it and to hear evidence that the practice of the State had been the other way. The question of constitutional power is the only one that could be raised, if even that were open upon this collateral attack, and as to that we cannot doubt that Pennsylvania could authorize the whole story to be brought out before the jury at once, even though two indictments were involved, without denying due process of law. If any question was made at the trial as to the loss of the right to challenge twenty jurors on each indictment, the only side of it that would be open here, would be again the question of constitutional power. That Pennsylvania could limit the challenges on each indictment to ten does not admit doubt.

There was not the shadow of a ground for interference with this sentence by *habeas corpus*. *Frank* v. *Mangum*, 237 U. S. 309, 326. Extraordinary cases where there is only the form of a court under the domination of a mob as was alleged to be the fact in *Moore* v. *Dempsey*, 261 U. S. 86, offers no analogy to this. In so delicate a matter as interrupting the regular administration of the criminal law of the State by this kind of attack too much discretion cannot be used, and it must be realized that it can be done only upon definitely and narrowly limited grounds.

Order reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.